IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 183 of 2006

HONOURABLE MR.JUSTICE KS JHAVERI

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SARMANBHAI PARBATBHAI SOLANKI - Appellant(s)
Versus
STATE TRANSPORT CORPORATION G.S.R.T.C. & 1 - Defendant(s)

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Appearance :
MR AMAR D MITHANI for Appellant(s) : 1,
MR RITURAJ M MEENA for Defendant(s) : 1,
RULE SERVED for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 19/07/2006

ORAL JUDGMENT

1. This appeal is directed against the judgement and award dated 18th August 2004 in Motor Accident Claim Case No.232 of 2003 by the Motor Accident Claims Tribunal (Aux.), Veraval whereby the claim petition has been allowed.

2. It is the case of the claimant that there was a vehicular accident on 22.7.2003 at about 20.30 hours on Junagadh Highway Road between village Supasi and Chanduvav, between ST Bus No.GJ-18-V-3430 and tractor No.GJ-2-B-4568 In pursuance of the said accident the aforesaid claim petition was filed.

3. Learned Advocate for the appellants submitted that the tractor belonged to the claimant was proceeding on correct side at a moderate speed and the ST bus was coming in excessive speed and dashed with the tractor. He submitted that though there was a specific case, no issue was framed with regard to ascertainment of negligence of each vehicle. He submitted that though there was evidence on the record to show that the negligence was on the part of the ST Bus the Tribunal has not considered the same.

4. Learned Advocate for the respondent has supported the tribunal and submitted that this court may not interfere with the judgement and award.

5. As a result of hearing and perusal of the record I am of the view that the Tribunal has not considered the aspect of negligence and no issue has been framed in this regard. It appears that the bills which were produced on record were not considered merely on the ground that the amount was not paid. I am therefore of the view that the matter requires reconsideration and interest of justice would be met by remanding the matter without going into the merits of the matter as any observation by this Court may affect the contentions of either parties before the Tribunal.

6. In the premises aforesaid the impugned judgement and award of the Tribunal is quashed and set aside. The matter is remanded to the Tribunal for fresh consideration of the matter. The parties are at

liberty to apply to the tribunal for cross examination of the witness if they choose to do so which will be granted by the Tribunal. On the particular facts of the case the tribunal shall hear and decide the matter within a period of six months from the date of receipt of writ of this order. Appeal is allowed accordingly. No order as to costs.

[K.S. JHAVERI, J.]

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